

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Blanca Telephone Company)	CC Docket 96-45
)	
Seeking Relief From the June 2, 2016)	FCC 17-162
Letter Issued by the Deputy Managing)	
Director Which Seeks to Enforce an)	
Interpretation of the Commission's Rules)	
Regarding the Use of USF High Cost)	
Funding for the Purpose of Operating a)	
Rural Mobile Cellular Telephone System)	
During the 2005-2010 Time Period)	

**To: The Secretary
For Distribution to the Commissioners**

**MOTION FOR IMMEDIATE ACTION ON
PETITION FOR RECONSIDERATION AND EMERGENCY REQUEST
FOR IMMEDIATE § 1.1910(b)(3)(i) RELIEF**

**Blanca Telephone Company
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November 25, 2019**

The Blanca Telephone Company (Blanca), by its attorney, pursuant to 5 U.S.C. § 706(1) and 47 C.F.R. § 1.41, hereby moves for an immediate ruling upon its December 29, 2017 Petition for Reconsideration And Emergency Request for Immediate § 1.1910(b)(3)(i) Relief¹ which, *inter alia*, objects to the confiscation of Blanca’s USF funding as ordered in the Commission’s *Memorandum Opinion and Order (MO&O)*, FCC 17-162, released December 8, 2017 (32 FCC Rcd. 10594 (2017)). In support whereof, the following is respectfully submitted:

On December 29, 2017 Blanca filed a petition for reconsideration in the captioned matter and, pursuant to § 1.1910(b)(3)(i), Blanca requested immediate relief from the Commission’s USF forfeiture collection announced in the *MO&O*. Blanca followed the Commission’s instruction that Blanca “can forestall the application of the rule [47 C.F.R. § 1.1910(b)(3)(i)] simply by requesting further review on the merits by ‘timely fil[ing] a challenge through an administrative appeal or a contested judicial proceeding.’” Respondent Federal Communications Commission’s Opposition to Petitioner’s Motion for Stay, 10th Cir. No. 17-1451, filed December 27, 2017, at 3, 18.²

Since the time that Blanca filed for reconsideration the Commission has confiscated over \$2

¹ A corrected “clean copy” of the reconsideration petition was submitted on January 7, 2018 to incorporate some minor textual corrections. On January 8, 2018 Blanca submitted a supplement to discuss several recently decided USF decisions involving large companies (the “hall pass” companies); as explained in the associated Motion for Leave to Supplement, at 1 n.1, the Supplement was submitted within Blanca’s 30 day reconsideration filing window.

² 47 C.F.R. § 1.1910(b)(3)(i) provides in pertinent part:

§ 1.1910 Effect of insufficient fee payments, delinquent debts, or debarment.***

(b)(2) ***Failure to make payment on any delinquent debt is subject to collection of the debt, including interest thereon, any associated penalties, and the full cost of collection to the Federal government pursuant to the provisions of the Debt Collection Improvement Act, 31 U.S.C. 3717.

(3)(i) The provisions of paragraphs (b)(2) and (b)(3) of this section will not apply if the applicant has timely filed a challenge through an administrative appeal or a contested judicial proceeding either to the existence or amount of the non-tax delinquent debt owed the Commission.***

million from Blanca via USF forfeiture collection.³ Moreover, since the time that Blanca settled the USF accounting matter in 2013, the Commission has caused Blanca to incur an estimated \$1 million in additional legal, accounting, and other expenses, to litigate a settled accounting matter and to waste another \$1 million for the 2013 settlement which is breached by the Commission's orders in this case. Despite inviting Blanca to seek relief pursuant to § 1.1910(b)(3)(i), and despite Blanca's timely and explicit request for emergency financial relief, the Commission has not granted Blanca any relief from USF forfeiture confiscation for approximately two years.

The Commission has failed to explain why interim financial relief is not available under § 1.1910(b)(3)(i), nor has the Commission issued a decision on reconsideration. Granting § 1.1910(b)(3)(i) rule relief and taking action on Blanca's reconsideration petition are non-discretionary legal requirements. Rather than respond with any manner of alacrity to Blanca's emergency request for financial relief, it appears that the Commission has decided to pursue a contrary course, having done nothing in this case for two years, all the while collecting a monthly forfeiture from Blanca approximating \$100,000 per month.⁴

The *MO&O* repeatedly asserts that the Commission's USF procedures and substantive requirements are "clear" and "plain" on their face, *MO&O*, 32 FCC Rcd. at 10602, 10603, 10608, 10611, 10614 ¶ 24, ¶ 25, ¶ 39 & n.105, ¶ 43 & n.124, ¶ 52, nevertheless, the Commission has done nothing for two years regarding Blanca's December 2017 reconsideration petition. The Commission

³ Because Blanca has various public service obligations under State and Federal law, Blanca has satisfied those requirements by drawing upon funds available to it. However, other carriers of last resort serving high cost areas are able to use USF funding and Blanca is being treated unfairly compared to those carriers and the people in Blanca's service area are being denied the Federal support needed to bring advanced telecommunications services to rural areas.

⁴ The Commission issued the *MO&O* about 1.5 years after Blanca filed its June 2016 requests for relief. It has now been nearly two years since Blanca refiled for relief and, from all appearances, the Commission has done absolutely nothing regarding Blanca's December 2017 request for relief.

recently resolved other USF-related reconsideration petitions which were filed many months after Blanca filed for reconsideration. *See e.g., Order on Reconsideration*, FCC 19-104, released October 31, 2019 (resolving six requests for reconsideration and other relief filed September 2018 within approximately one year after filing).⁵

The Commission's recently released reconsideration order in FCC 19-104 involved multiple rounds of comments in a complex, forward looking USF-related standards proceeding. Contrasted against FCC 19-104 is Blanca's summary forfeiture proceeding which the Commission frames as an easily decided matter, but one which inflicts actual, current and ongoing, financial harm upon Blanca for accounting actions which occurred many years ago. The Commission continues to treat Blanca unfairly with respect to other regulated entities in violation of its administrative right to similar treatment (the five large "hall pass" companies discussed in Blanca's January 8, 2018 Supplement which received lenient treatment for USF violations) and with respect to a fair application of the rules even without peer comparison.

The Commission's protracted delay in ruling upon Blanca's December 2017 reconsideration petition indicates, at a minimum, that the Commission is having significant difficulty justifying its handling of this novel asset forfeiture proceeding. In fact, the Commission cannot articulate what kind of review proceeding it is conducting, having informed the Tenth Circuit in No. 18-9502 that Blanca's 2017 reconsideration petition sought elective relief, but asserting in No. 18-9587 that Blanca sought mandatory relief.⁶

⁵ The instant filing is being made within 30 days after the release of FCC 19-104. 47 C.F.R. § 1.65 (authorizing applicants to amend information within 30 days).

⁶ Blanca asserted at the outset that the Commission's approach in this proceeding is novel, procedurally and substantively flawed, and confusing. Based upon the Commission's protracted delay in deciding this matter, it appears that the Commission has reached the same conclusion.

The Commission started its investigation of Blanca nearly 12 years ago and has had more than a sufficient amount of time to try to justify its rule violation/forfeiture determination, yet the Commission delays for no apparent reason. The Commission's protracted delay in issuing a decision on reconsideration supports Blanca's argument that the Commission's summary decision process, and the Commission's promulgation of a substantive and interpretive USF funding rule in this proceeding, are fundamentally defective else the Commission would have rendered a prompt decision on reconsideration. The Commission's inexplicable and protracted delay is especially grievous given the fact that the Commission is extracting monthly financial penalties from Blanca and depriving the people in Blanca's high-cost service area of Federal funding for rule required service improvements which is provided to other service areas.⁷

The Commission's failure to act for two years, either on the requested interim financial relief or the reconsideration petition itself, is protracted, unreasonably delayed, and wrongfully withheld. As previously discussed in Blanca's 2016 petition for reconsideration/application for review, and Blanca's 2017 petition for reconsideration, the Commission is required to grant relief on the merits on various non-discretionary grounds because:

- 1) the Commission failed to comply with the statute of limitations;
- 2) the summary procedure utilized by the Commission is not authorized by the Commission's rules and Blanca's due process rights were violated;
- 3) there was a lack of notice of the interpretive USF funding rule promulgated in the staff's

⁷ Nothing about Blanca's appellate court litigation required the Commission to sit on its hands regarding Blanca's reconsideration petition. 47 U.S.C. § 405(a) explicitly provides that subsequent review of an order shall not "operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission." The Commission never stayed FCC 17-162; in fact, the Commission is enforcing its order to Blanca's financial detriment. *Accord*, Respondents' Opposition to Petition for Rehearing, at 14, Tenth Circuit No. 18-9502, filed November 20, 2018 (reciting that Commission orders routinely become effective during review).

June 2016 summary forfeiture order and affirmed in the *MO&O*;⁸

4) Blanca complied with a reasonable reading of the USF funding rules, including the Commission's 1994 authorization allowing carriers of last resort like Blanca to replace their 150/450 MHz BETRS with cellular BETRS;

5) the Commission claimed that USF money is available only to regulated services, but ignores the fact that Blanca provided a regulated service as a matter of fact and law;

6) the Commission's orders breach the 2013 NECA settlement; and

7) the Commission plainly erred in denying financial relief pursuant to § 1.1910(b)(3)(i) where litigation of the purported debt remains live.⁹ In fact, as shown in the attachment hereto generated from the Commission's financial computer, not only does Blanca have no "delinquent debt" which is subject to offset, Blanca has no debt at all which is subject to collection.¹⁰

The Commission lacks discretion in each of these areas and these Commission errors cannot be "fixed" after the fact. The summarized arguments above appear to be troublesome for the

⁸ The Commission justifies the rule interpretation promulgated in this case by 1) relying upon Supreme Court decisions which are decades old, which have nothing to do with USF funding specifically, or even with the FCC generally; and 2) relying upon Commission precedent which post-dates the 2005-2010 accounting period at issue in Blanca's accounting review. Blanca's December 2017 Reconsideration Petition, 1-2. Describing the Commission's notice argument as a weak reed would overstate the strength of the Commission's argument.

⁹ The financial relief rule does not have any means test, or success test, or any other preconditions limiting its application, and affords the Commission no discretion. Blanca is not seeking a stay of any Commission order, Blanca seeks application of a rule which the Commission informed the Tenth Circuit becomes applicable "simply by requesting further review." The Commission's failure to apply the mandatory financial relief rule to Blanca is unreasoned and plainly violates the rule.

¹⁰ On January 11, 2018, after Blanca had filed its December 29, 2017 reconsideration petition objecting to the red lighting of Blanca, the Commission altered its Red Light display to show that Blanca had no outstanding debt, delinquent or otherwise; the Commission continues to show no debt outstanding for Blanca. See Attachment hereto, copies of Blanca's Red Light Status printouts for January 8, 2018, January 9, 2018, and January 11, 2018, and a copy of undersigned counsel's January 12, 2018 email and associated letter objecting to the Commission's ongoing collection of a non-existent "debt."

Commission and seem to reasonably explain the FCC's protracted failure to act on Blanca's reconsideration request. The only available remedial actions are reversal and restoration of the money which has been, and continues to be, wrongfully extracted from Blanca.

Request for Relief

Blanca is entitled to immediate financial relief, via reinstatement of its USF funding, pursuant to 5 U.S.C. § 706(1) and Section 1.1910(b)(3)(i).¹¹ Moreover, because the Commission's confiscation of Blanca's USF funding is unlawful, Blanca is entitled to: 1) recoupment of all USF funding which has been wrongfully withheld since January 2018, approximately \$2.4 million to date; 2) recoupment of the approximately \$1 million settlement money paid in 2013 in light of the Commission's breach of the 2013 accounting settlement; and 3) the Commission must instruct NECA/USAC that Blanca is entitled to include in its USF funding submissions, the legal, accounting, and associated expenses which Blanca has incurred since January 2014 when the Commission wrongfully referred this matter to the DoJ for a False Claims Act prosecution and transformed the accounting review into an improperly conducted and untimely summary rule violation and penalty imposition proceeding.¹²

WHEREFORE, the Commission should immediately reconsider FCC 17-162, terminate the multi-year investigation of Blanca, and grant the financial and other relief Blanca has requested.

¹¹ In the absence of immediate relief from the Commission, Blanca shall seek appellate relief.

¹² Blanca was instructed by NECA that the litigation expenses associated with the FCC USF forfeiture proceeding may not be claimed through Blanca's USF accounting submissions. However, because Blanca was required to incur significant litigation expenses to prove USF compliance, Blanca must be allowed to claim those expenses as part of its USF compliance costs.

Respectfully submitted,
BLANCA TELEPHONE COMPANY

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November 25, 2019

Attachment Index
Motion for Immediate Action
CC Docket 96-45; FCC 17-162

- 1) 180108 Blanca's Red Light Status - Red – Showing Delinquent Non-Tax Debt Owed
to the Commission of Nearly \$7 Million 00001
- 2) 180109 Blanca's Red Light Status - Green – No Delinquent Non-Tax Debt Owed
to the Commission, but Showing a Non-Delinquent Non-Tax Debt Owed
to the Commission of Nearly \$7 Million 00002
- 3) 180111 Blanca's Red Light Status - Green - No Outstanding Delinquent or
Non-Delinquent Non-Tax Debt Owed to the Commission. 00003
- 4) 180112 Blanca's Objection To Collection Without Delinquent Debt. 00004
- 5) 191121 Blanca's Certification. 00014



Red Light Display System (RLDS)

Red Light Display System

[FCC](#) | [Fees](#) | Red Light Display System

[< FCC Site Map](#)

 Logged in as FRN: Blanca Telephone Company (0003766201) [[Log Out](#)]

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[▼ Pay Delinquent Bills](#) | [► Bill Details](#)

1/8/2018 8:05 AM

Current Status for FRN 0003766201

STATUS: Red

Status summary:

- You have **1 delinquent FCC bill** which is restricting you from doing business with the FCC.

■ Pay Delinquent Bills

[How to read Form 159B](#)

<input type="checkbox"/> Select to Pay	Bill Number	Original Amount	Amount Paid	Balance Due	Due Date	Status	View/Print
Debtor: Blanca Telephone Company (FRN: 0003766201)							
<input type="checkbox"/>	16USFBLANCATEL	\$6,903,165.53	\$0.00	\$6,903,165.53	07-05-2016	RED	Form 159B
CONTINUE							

The Red Light Display System checks all FRNs associated with the same Taxpayer Identification Number (TIN). If a FRN owes a delinquent non-tax debt to the Commission, that debt will cause a red light to appear for inquiries made on behalf of all other FRNs sharing that TIN. Therefore, the Debtor FRNs listed above may not be the same as the one used to make this red light inquiry.

The Red Light Display System was last updated on 1/8/2018 at 6:35 AM; it is updated once each business day at about 7 a.m., ET.

To view and print the Form 159B you must have [Adobe Reader](#) installed on your machine. Form 159B will open in a new window. If you have a pop-up blocker enabled, please disable it before continuing.

Customer Service

[Red Light Help](#)
[FCC Debt Collection](#)
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Red Light Display System Help Line: (877) 480-3201, option 6; TTY (202) 414-1255 (Mon.-Fri. 8 a.m.-6:00 p.m. ET)

Red Light Display System has a dedicated staff of customer service representatives standing by to answer your questions or concerns. You can email us at arinquiries@fcc.gov or fax us at (202) 418-7869.

00001



Red Light Display System (RLDS)

Red Light Display System

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1/9/2018 7:15 AM

Current Status of FRN 0003766201

STATUS: Green

You have no delinquent bills which would restrict you from doing business with the FCC.
You also have 1 open bill which can be paid from this page.

The Red Light Display System checks all FRNs associated with the same Taxpayer Identification Number (TIN). A green light means that there are no outstanding delinquent non-tax debts owed to the Commission by any FRN associated with the requestor's TIN. The Red Light Display System was last updated on 01/09/2018 at 6:36 AM; it is updated once each business day at about 7 a.m., ET.

■ Pay Bills

[How to read Form 159B](#)

<input type="checkbox"/> Select to Pay	Bill Number	Original Amount	Amount Paid	Balance Due	Due Date	View/Print
FRN: 0003766201						
<input type="checkbox"/>	16USFBLANCATEL	\$6,903,165.53	\$0.00	\$6,903,165.53	07-05-2016	Form 159B
CONTINUE						

Customer Service

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00002



Red Light Display System (RLDS)

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1/11/2018 10:40 AM

Current Status of FRN 0003766201**STATUS: Green****You have no delinquent bills which would restrict you from doing business with the FCC.**

The Red Light Display System checks all FRNs associated with the same Taxpayer Identification Number (TIN). A green light means that there are no outstanding delinquent non-tax debts owed to the Commission by any FRN associated with the requestor's TIN. The Red Light Display System was last updated on 01/11/2018 at 6:36 AM; it is updated once each business day at about 7 a.m., ET.

Customer Service[Red Light Help](#)[FCC Debt Collection](#)[FCC Fees](#)[Web Policies](#) / [Privacy Policy](#)**Red Light Display System Help Line: (877) 480-3201, option 6; TTY (202) 414-1255 (Mon.-Fri. 8 a.m.-6:00 p.m. ET)**

Red Light Display System has a dedicated staff of customer service representatives standing by to answer your questions or concerns. You can email us at arinquiries@fcc.gov or fax us at (202) 418-7869.

From: Tim Welch <welchlaw@earthlink.net>
Sent: Friday, January 12, 2018 10:49 AM
To: Ajit Pai; Mignon Clyburn; Mike O'Rielly; Jessica Rosenworcel; Brendan Carr
Cc: Thomas Johnson; Jacob.Lewis@fcc.gov; richard.welch@fcc.gov; scott.noveck@fcc.gov; Neil Dellar; Mark Stephens; Tim Welch
Subject: Re: Blanca Telephone Co. -- CC Docket 96-45 -- FCC 17-162 -- Petition for Reconsideration
Attachments: 180112_Response to FCC Jan 10 Letter.pdf; 180112_Blanca Red Light Display System Green.pdf

Good morning,

On January 10, 2018 we received letter notice from the FCC that the FCC is commencing debt collection activity against Blanca Telephone. As explained in our attached response, that action effectively denies Blanca Telephone's December 29, 2017 Petition for Reconsideration. The RLDS system shows that Blanca Telephone's RLDS status is **GREEN** and that Blanca Telephone has no outstanding delinquent debt, but because the FCC is pursuing a delinquent debt collection against Blanca pursuant to 47 C.F.R. Sec. 1.1910(b)(2), then the FCC must have denied Blanca Telephone's Petition for Reconsideration, including Blanca Telephone's request for financial relief under 47 C.F.R. Sec. 1.1910(b)(3)(i) during the pendency of the debt litigation. Denial of Blanca's Petition for Reconsideration is the only reason I can discern which might arguably justify the FCC's January 10 debt collection action – I write “arguably” because the prohibition of debt collection applies throughout the litigation of the debt issue, including judicial proceedings. 47 C.F.R. Sec. 1.1910(b)(3)(i). I disagree with the FCC's notion that the RLDS can change from green to red during the time after an order issues, but before the pertinent time to file for review has expired. Until an order is “final” the order remains subject to litigation.

Blanca Telephone intends to file for appellate review of the debt matter and to bring the FCC's debt collection activity to the attention of the appeals court in view of the fact that the FCC has no rule which authorizes collection/enforcement activity against non-delinquent debt. It is assumed that the FCC's institution of debt collection activity, where there is no outstanding delinquent debt, will be of interest to the reviewing court. The FCC's procedural irregularity is an important issue because the FCC is attempting to leverage its ability to inflict financial harm upon Blanca Telephone, a small company not entitled to one of the FCC's large company “hall passes,” to try to force a settlement in this case on the FCC's preferred terms. The central issue in the case will be whether the FCC can, by summary order, declare that rules were violated years ago, declare a debt owed, and then collect that debt. Even so, the FCC's procedural abuse of Blanca Telephone warrants judicial review. That said, the attached response discusses Blanca Telephone's willingness to discuss settlement. If the parties are discussing settlement at the time that Blanca Telephone files for appellate review, those discussions can continue, perhaps by taking advantage of the appellate mediation program.

Tim

Timothy E. Welch
Hill & Welch
1116 Heartfields Drive
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202-321-1448 (cell)
301-622-2864 (fax)

From: Tim Welch
Sent: Monday, January 8, 2018 9:19 AM

To: Ajit Pai ; Mignon Clyburn ; Mike O'Rielly ; Jessica Rosenworcel ; Brendan Carr

Cc: Thomas Johnson ; Jacob.Lewis@fcc.gov ; richard.welch@fcc.gov ; scott.noveck@fcc.gov ; Neil Dellar ; Tim Welch

Subject: Re: Blanca Telephone Co. -- CC Docket 96-45 -- FCC 17-162 -- Petition for Reconsideration

Good morning,

On January 7, 2017 Blanca filed a clean copy of its December 29, 2017 Petition for Reconsideration and Emergency Request for Immediate § 1.1910(b)(3)(i) Relief. The clean copy removes the redlining from two Errata Blanca filed on December 30, 2017 and January 5, 2018. A clean version of the Petition for Reconsideration is attached for your convenience.

This morning Blanca filed a motion to supplement the Petition for Reconsideration. On December 29, 2017 the FCC released 5 USF enforcement cases (FCC 17-172 through FCC 17-177) which show, by comparison, that Blanca is being treated differently and much more harshly than other carriers even though, unlike those other carriers: no NAL was issued against Blanca, no formal charge of “waste, fraud, and abuse” was leveled against Blanca, and no false statements have been attributed to Blanca. The FCC must explain how Blanca can be treated more harshly than these other carriers who had formal NALs issued against them. Blanca has been referred to the DoJ for False Claims prosecution and is subject to an open-ended USF liability while these other carriers received “hall passes” to use Commissioner Clyburn’s words. One of the December 29, 2017 orders is attached for easy reference.

As a final matter, this morning I checked the Red Light system and I saw that Blanca’s light is still RED (screen shot attached). The General Counsel’s December 27, 2017 Response at 3 in No. 17-1451 represented to the 10th Circuit that Blanca “can forestall the application of the rule simply by requesting further review on the merits by ‘timely fil[ing] a challenge through an administrative appeal or a contested judicial proceeding.’” Promptly thereafter Blanca filed its December 29, 2017 Petition for Reconsideration and specifically requested the relief proffered by the General Counsel (on an emergency basis). The FCC activated Blanca’s red light within one business day after releasing FCC 17-162 at issue in the Petition for Reconsideration and a similarly prompt change to a Green light is required so that Blanca does not suffer missed USF payments and delayed application processing. Please advise me as soon as possible if the FCC has changed its mind and it does not intend to provide Blanca’s requested rule relief.

Tim

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From: Tim Welch

Sent: Saturday, December 30, 2017 11:38 AM

To: Ajit Pai ; Mignon Clyburn ; Mike O'Rielly ; Jessica Rosenworcel ; Brendan Carr

Cc: Thomas Johnson ; Jacob.Lewis@fcc.gov ; richard.welch@fcc.gov ; scott.noveck@fcc.gov ; Tim Welch

Subject: Blanca Telephone Co. -- CC Docket 96-45 -- FCC 17-162 -- Petition for Reconsideration

Good morning,

Yesterday we filed a petition for reconsideration in CC Docket 96-45 for Blanca Telephone Company regarding FCC 17-162. This morning we filed a red lined Errata with some updates to the petition. A copy of the red lined Errata is attached for your convenience.

The petition seeks emergency/immediate relief under 47 C.F.R. Section 1.1910(b)(3)(i) to halt debt collection efforts, to resume USF payments, and to process a long pending license assignment to AT&T. Whether Blanca's red light was properly activated is the subject of a mandamus proceeding in the Tenth Circuit (No. 17-1451).

Please let me know if you have any questions.

Tim

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January 12, 2018

Mark Stephens
Managing Director
Federal Communications Commission
Washington, D.C. 20554

By email

Re: CC Docket No. 96-45
Blanca Telephone Company
Response to the FCC's January 10, 2017 Debt Collection Letter
Notice of Intent to Seek Appellate Review

Dear Mr. Stephens,

I am writing in response to the FCC's January 10, 2018 letter to Blanca Telephone which discusses the FCC's imposition of an offset to begin collecting a purported debt which is the subject of the FCC's non-final debt discussion in the FCC's December 8, 2017 order (FCC 17-162). I was previously instructed to file submissions in CC Docket 96-45, therefore, I have submitted this letter into that docket.

As discussed in more detail below, the debt collection action announced in the FCC's January 10, 2018 letter is defective because: 1) the RLDS (Red Light Display System) shows that Blanca Telephone has no delinquent debt which could be subject to a collection effort; 2) the FCC's rules do not contain any authorization to demand or to call or to collect a current, non-delinquent debt, the FCC can only proceed against delinquent debt; and 3) Blanca Telephone's December 29, 2017 Petition for Reconsideration sought emergency relief under the plain text of § 1.1910(b)(3)(i) which provides protection from debt collection while the existence of the debt is contested, a protection which was confirmed by the FCC's June 22, 2016 letter, however, the January 10 denies continued application of that requested relief and effectively denies the Petition.

According to the attached RLDS status report which I printed this morning, Blanca Telephone currently has a green light status and Blanca has no "delinquent debt" owed to the FCC. In fact, the RLDS status report indicates that Blanca does not owe any debt to the FCC, let alone owe any "delinquent debt." Accordingly, at this time there is no "delinquent debt" for the FCC to offset,

notwithstanding the reference in the January 10 letter to the non-final order FCC 17-162.

On January 9, 2018 the FCC changed Blanca Telephone's RLDS status from red to green after receipt of my January 8, 2018 email regarding Blanca Telephone's RLDS indicator status. As stated in the FCC's own RLDS status report, green RLDS status means that Blanca Telephone has "no delinquent bill" at the FCC and "a green light means that there are no outstanding non-tax debts owed to the Commission." Because Blanca has no delinquent debt owed to the FCC, Blanca Telephone is current regarding any outstanding debt payment obligation the FCC might think that exists and Blanca Telephone is otherwise fully meeting the FCC's debt payment expectations.

The FCC's rules allow the FCC to collect "delinquent debt." 47 C.F.R. § 1.1910(b)(2). The FCC's rules do not contain any "call at will" or "payment upon demand" or any similar provision which authorizes the FCC either 1) to demand immediate payment of a non-existent debt or 2) to demand immediate payment of a debt which is current and in good standing. The clear language of 47 C.F.R. § 1.1910(b)(3)(i) provides that the FCC will not use the §§ 1.1910(b)(2),(3) enforcement actions application deferral or debt collection while the existence of the debt is litigated at the FCC or in a contested judicial proceeding. December 29, 2018 Petition for Reconsideration at 24. The FCC's enforcement action against Blanca Telephone to collect a disputed debt on an FCC account which the FCC's own financial computer shows to be in good standing violates the plain text of the cited rule, denies the relief for which Blanca Telephone applied in its recently filed Petition for Reconsideration, and alters without discussion or reason the financial protection provided to Blanca Telephone in the FCC's June 22, 2016 letter.

There is no reason for the FCC to pursue debt collection action against Blanca at this time unless the FCC's January 10, 2018 letter is read as denying Blanca's December 29, 2017 Petition for Reconsideration, as supplemented on January 8, 2018, and the FCC considers that the debt issue is resolved and that Blanca Telephone has "delinquent debt" notwithstanding the attached **GREEN** RLDS report. The December 10, 2018 letter denies Blanca Telephone's requested financial relief and the FCC is proceeding as if the case is no longer being litigated. Accordingly, the FCC's January 10, 2018 letter constitutes a denial, and an effective denial, of Blanca's December 29, 2017 Petition for Reconsideration, as supplemented. We appreciate the FCC's prompt consideration of the reconsideration matter.

Blanca Telephone intends to seek appellate review of this matter including a request for review of the FCC's improper debt collection activity which was previously brought to the Tenth Circuit's attention in the mandamus proceeding No. 17-1451 (petition denied because more than a showing of agency error is required to obtain extraordinary relief). The FCC informed the Court in No 17-1451 that Blanca could obtain relief by filing for agency review, but the FCC has not provided any relief to Blanca Telephone. Construction of the January 10 letter as a prompt denial of Blanca Telephone's December 29 Petition, as supplemented, allows the FCC's representation to the Court to be construed as being reasonably accurate: if the Petition, as supplemented, were still under FCC review a question would arise on appellate review regarding the FCC's use of its legal processes to collect a non-delinquent debt notwithstanding the FCC's representation to the Tenth Circuit that Blanca Telephone "can forestall the application of the rule simply by requesting further review on the merits by 'timely fil[ing] a challenge through an administrative appeal or a contested judicial proceeding.' 47 C.F.R. § 1.1910(b)(3)(i)."

The FCC's January 10, 2018 letter, without discussion, removes the financial penalties which were previously sought by the FCC. December 29, 2017 Petition for Reconsideration at 7. That removal does not change the fact that the FCC plainly attempted to impose financial penalties upon Blanca thereby rendering the FCC's enforcement action against Blanca penal in nature. Moreover, the penal nature of the FCC's novel rule enforcement and forfeiture ordered against Blanca Telephone is not remedied by removal of some of the penalties.

Regarding settlement discussion: Thank you for your second invitation to discuss a settlement agreement regarding the USF matter, notwithstanding the fact that the FCC's settlement overtures are extremely untimely and substantively different compared to the settlement discussions the FCC had with the five "hall pass" companies which are discussed in Blanca Telephone's January 8, 2018 Supplement. Unlike Blanca Telephone, those companies were not discussing settlement after issuance of a reviewable order, nor after referral to the DoJ for action under the False Claims Act even though, unlike Blanca Telephone, those companies made numerous false statements to the FCC and collected USF money which was not used for the purpose of providing telecommunications services in a rural high cost area. Those companies took USF money, but provided no service to additional subscriber lines, in schemes amounting "waste, fraud, and abuse" of USF funds.

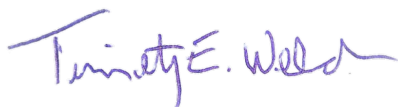
Based upon our prior experience in this case including, *inter alia*, the FCC's breach of a long settled NECA/USAC/FCC/Blanca Telephone accounting matter, the FCC's misuse of that long settled matter to infer and to impose upon Blanca Telephone a greater USF liability and penalty, and the FCC's improper public disclosure of confidential settlement discussion between Blanca Telephone's Colorado counsel and the DoJ for the purpose of imposing USF liability and penalties upon Blanca Telephone, *see* Blanca Telephone's June 24, 2016 Petition for Reconsideration at 9 n. 6, 13 n. 12, 15, and because Blanca Telephone has not received any assurance that a repeat of those experiences will not recur, I am concerned that the FCC might attempt to use Blanca Telephone's informal settlement discussion against it in some future order. Under these circumstances, at this time, I am not comfortable discussing settlement orally. However, I am comfortable responding in writing. I will be responsive to any FCC settlement comment regardless of the format in which the comment is made, but at this point I envision any follow-up by me to be written. Please note that based upon prior experience I do not consider any of the matters discussed in this letter, or to be discussed, to be privileged settlement discussion even if the purpose is settlement.

My understanding is that the last settlement discussion between Blanca Telephone and the DoJ involved the DoJ's take-it-or-leave-it offer that Blanca Telephone pay about \$8 million to settle the matter and the DoJ advised Blanca Telephone's civil counsel that if the matter were not resolved via settlement the FCC would issue a money order of some sort and that the FCC faced a lesser debt collection risk compared to the DoJ. Thereafter, after the passage of about 7-8 months, the DoJ's take-it-or-leave-it settlement proposal was followed by the FCC's June 2, 2016 Informal Debt Adjudication Order which brought about the current legal proceeding and which ultimately led to the FCC's current, inexplicable debt collection effort. Contrary to the DoJ's view, Blanca Telephone's view is that the FCC ultimately faces significant debt collection issues and risks even if in the short run the FCC ignores the financial protection afforded by § 1.1910(b)(3)(i), denies Blanca Telephone's explicit request for relief under that rule, utilizes a non-existent "call at will" debt collection procedure to collect a non-delinquent debt, and ignores the plain fact that Blanca Telephone has no outstanding delinquent debt to collect according to the FCC's own financial records.

With the understanding that the government is no longer operating from a take-it-or-leave-it position, and with the understanding that by referencing the DoJ settlement discussions in the January 10 letter the FCC is indicating that it is authorized to compromise the DoJ's position, Blanca Telephone proposes a settlement framework where:

- 1) Blanca Telephone will pay \$39,226 to the FCC, or USAC, or The Treasury or to any FCC designee (*see* FCC 17-173 to calculate the "payment to claim" ratio in one of the "hall pass" cases), without admitting fault, liability, or wrong doing and without the settlement being construed that way;
- 2) Blanca Telephone will not be required to institute any compliance program regarding the FCC's hitherto long dormant concern about ancient accounting matters;
- 3) USF payments to Blanca Telephone will promptly resume and USAC will promptly remit to Blanca any and all USF payments which were not made after issuance of the December 8, 2017 Order;
- 4) all matters relating to Blanca Telephone's USF claims for its cellular system will be considered fully resolved and settled;
- 5) neither the FCC nor the DoJ will make any effort to make any further USF claim regarding any time period regarding Blanca Telephone's cellular system;
- 6) the FCC will rescind its DoJ referral and the DoJ will not pursue any type of case against Blanca Telephone or its principals and the DoJ will be a signatory to the settlement agreement;
- 7) Blanca Telephone will relinquish its approximately \$1 million claim regarding the FCC's breach of the 2013 NECA/USAC/FCC/Blanca Telephone settlement; and
- 8) the settlement will be reflected in a settlement agreement enforceable by all signatories to the agreement; the settlement will not be in the form of a "consent decree" subject to the FCC's exclusive and continuing oversight; and the FCC will issue an order resolving the case and will make a finding that "given the circumstances of this case, the public interest is served by resolution of this matter by settlement agreement with no finding of fault or wrong doing being made, entered, or implied and with no implementation of any compliance program being required."

Respectfully,



Timothy E. Welch



Red Light Display System (RLDS)

Red Light Display System

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 Logged in as FRN: Blanca Telephone Company (0003766201) [[Log Out](#)]

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1/12/2018 7:00 AM

Current Status of FRN 0003766201

STATUS: **Green**

You have no delinquent bills which would restrict you from doing business with the FCC.

The Red Light Display System checks all FRNs associated with the same Taxpayer Identification Number (TIN). A green light means that there are no outstanding delinquent non-tax debts owed to the Commission by any FRN associated with the requestor's TIN. The Red Light Display System was last updated on 01/12/2018 at 6:35 AM; it is updated once each business day at about 7 a.m., ET.

Customer Service

[Red Light Help](#)
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Red Light Display System Help Line: (877) 480-3201, option 6; TTY (202) 414-1255 (Mon.-Fri. 8 a.m.-6:00 p.m. ET)

Red Light Display System has a dedicated staff of customer service representatives standing by to answer your questions or concerns. You can email us at arinquiries@fcc.gov or fax us at (202) 418-7869.



Federal Communications Commission
Washington, D.C. 20554

January 10, 2018

By U.S. Postal service
And E-Mail to alanwehe@fone.net
alanwehe@GoJade.Org

Mr. Alan Wehe
General Manager
Blanca Telephone Company
129 Santa Fe Ave.
Alamosa, CO 81101

Re: The Blanca Telephone Company ("Blanca"): Offset Notification

Dear Sir,

As you are aware, on December 8, 2017, the Federal Communications Commission ("Commission") released a Memorandum Opinion and Order, and Order on Reconsideration, relating to Blanca under number FCC 17-162 ("Order").¹ The Order affirmed the conclusion and directive of the Commission's Office of Managing Director that Blanca owes and must repay the Universal Service Fund \$6,748,280 (the "Debt"), the amount of universal service support Blanca received to which it was not entitled. The purpose of this letter is to advise you that, as directed by the Commission in the Order, we will pursue collection of this amount, *inter alia*, by offset/recoupment of amounts otherwise payable to you by the Universal Service Fund.

Accordingly, as from the date of the Order, December 8, 2017, Blanca's monthly support from the Universal Service Fund will be offset/recouped against the Debt, until the Debt is satisfied or until you have made acceptable arrangements for its satisfaction. In this regard, we reiterate our willingness to continue the settlement discussions that were originated with your attorney, Mr. Tegtmeier, and the Department of Justice.

¹ *In the Matter of Blanca Telephone Company Seeking Relief from the June 22, 2016 Letter Issued by the Office of the Managing Director Demanding Repayment of a Universal Service Fund Debt Pursuant to the Debt Collection Improvement Act*, CC Docket No. 96-45, Memorandum Opinion and Order and Order on Reconsideration, (rel. December 8, 2017).

If you have any questions, your attorney may contact Neil Dellar on (202) 418-8214.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Mark Stephens', with a long horizontal flourish extending to the right.

Mark Stephens
Managing Director

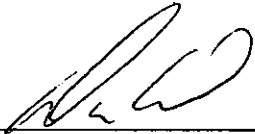
Copies:

Michele Ellison – Deputy GC

Mike Pond -- USAC

CERTIFICATION

I hereby certify under penalty of perjury that the factual information contained in the foregoing Motion for Immediate Action on Petition for Reconsideration and Emergency Request for Immediate § 1.1910(b)(3)(i) Relief is true and correct to the best of my knowledge, information, and belief.



Alan Wehe, General Manager
Blanca Telephone Company
November 21, 2019